

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

CLARIANT CORPORATION1/

Employer

And

Case No. 11-RC-6385

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 470,  
AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 1/

All full-time and regular part-time hourly paid production employees including warehouse operators, packaging operators, ground 1 operators, ground 2 operators, ground 3 operators, dryer operators 1, dryer operators 2, laboratory technicians, product operators, store clerks, lead warehouse operators, and control room operators employed by the Employer at its Carlisle, South Carolina facility, but excluding all office clerical employees, management personnel, and guards, professional employees and supervisors as defined in the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

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engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

International Union of Operating Engineers, Local 470, AFL-CIO

#### LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 11 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office of the National Labor Relations Board, Region 11, 4035 University Parkway, Suite 200, P. O. Box 11467, Winston-Salem, North Carolina 27116-1467, on or before **March 31, 2000**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

If you have any questions, please contact the Regional Office.

#### RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **April 7, 2000**.

Dated March 24, 2000

at Winston-Salem, North Carolina

/s/ Howard D. Neidig, Jr.  
Acting Regional Director, Region 11

- 1/ The name of the Employer, Clariant Corporation, (hereinafter “the Employer”) appears as amended at the hearing.
- 2/ The Employer is a New York corporation with a facility located in Carlisle, South Carolina, where it is engaged in the manufacture and non-retail sale of industrial chemicals. During the preceding twelve months, the Employer purchased and received at its Carlisle, South Carolina facility, products, goods and raw materials valued in excess of fifty thousand dollars (\$50,000.00) directly from points located outside the State of South Carolina.

Both the Employer and International Union of Operating Engineers, Local 470, AFL-CIO (hereinafter “the Union”) filed briefs which have been carefully considered.

The parties agree as to the scope and composition of the unit except that the Union takes the position that the four control room operators (also known as team leaders) are supervisors and should be excluded from the unit, whereas the Employer argues that those individuals are non-supervisory and should be included in the unit. There are between 40 and 45 employees in the unit found appropriate herein.

The Employer is a chemical plant which manufactures dry and liquid forms of the chemicals used for bleaching in the paper industry and in textiles. The plant utilizes a team concept which it started around 7 years ago. There are four rotating twelve-hour shifts (A,B,C, and D) which run from 7:00 a.m. to 7:00 p.m., and 7:00 p.m. to 7:00 a.m. Each shift works an equal number of days and nights per year. Thus, on any given day, one shift works during the day and one shift works during the night and two shifts are off. There are a total of 38 operators including the disputed positions. Each team consists of approximately 8-10 people including a control room operator. The job process is continuous and as one operator leaves, the other operator starts the job. All of the operators report to operations supervisors, Tommy Lewis and Dennis Parkins, who admittedly exercise supervisory authority.

Section 2(11) of the Act provides that a supervisor has “authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” That section is applied in the disjunctive and possession of any one of the foregoing powers is sufficient to confer supervisory status. Adco Electric Incorporated, 307 NLRB 1113, 1120 (1992), enforced, 6 F.3d 1110 (5<sup>th</sup> Cir. 1993). In enacting Section 2(11), Congress sought to distinguish between truly supervisory personnel who are vested with “genuine management prerogatives such as the right to hire or fire, discipline or make effective recommendations with respect to such action,” and employees—such as “straw bosses, leadmen, and set-up men”—who enjoy the Act’s protections even though they perform “minor supervisory duties.” NLRB v. Bell Aerospace Co., 416 U.S. 267, 280-281 (1974) (quoting Sen. Rep. No. 105, 80<sup>th</sup> Cong., 1st Sess., 4 (1947)). The Board generally does not construe supervisory status too broadly because those individuals will be removed from the protection of the Act. Adco, at 1120.

The record shows that control room operators operate a variety of manual and electronic controls to monitor the manufacturing of the product throughout its multiple phases, perform

testing of small samples of product, and open and shut valves in the production area. Significantly, control room operators spend around 95% of their time doing production duties. Chrome Deposit Corporation, 323 NLRB 961, 964 (1997) (crew leaders not supervisors where they spent the majority of their time performing unit work). The nature of the work is routine in that the Employer manufactures the same product (with some variations) repeatedly. Here all of the employees on each team are well-trained self-directed senior employees. Due to their experience, control room operators are responsible for making sure that the operation is running smoothly and may provide guidance when operational problems occur. However, the evidence failed to show that control operators responsibly direct employees, in the sense of being fully accountable for the employees' work performance.

In contending that the control room operators are supervisors, the Union relies on the fact that the Employer's policy and procedure manual equates the term "team leaders" with supervisors in several circumstances. Specifically, that manual states that team leaders/supervisors, inter alia, have authority as follows: 1) to take verbal or written corrective action and recommend suspension or termination 2) to excuse absences, to determine whether a tardy employee will work that day, and must be notified if the employee will be absent 3) regarding hiring, to initiate a personnel requisition form which requires approval and 4) to evaluate job performance. The Employer explained that the manual was a generic corporate policy but that the Employer has a site specific supplement which is controlling. The latter document showed that only an individual denoted supervisor, not team leader, had those powers. Moreover, the Union adduced no contrary evidence to show that control room operators, in fact, exercised such supervisory authority. In any event, it is well settled that "someone [who] may have the title of supervisor, or have theoretical authority which is not actually exercised is insufficient to establish that one is a statutory supervisor." Washington Nursing Home, 321 NLRB 366, 381 (1996). Accord Wilson Tree Co., 312 NLRB 883, 885 (1995) (crew chiefs not supervisors even though personnel manual gave them authority to hire, discharge, and direct employees, where, in practice, employees did not exercise such authority). For the same reasons, the fact that some upper level managerial positions have team leader as part of their titles does not prove that control room operators are also supervisors. In fact, other Employer documents list admittedly nonsupervisory jobs under the heading production management.

The fact that other employees consider control room operators to be supervisors, that management may have implied at times that they are supervisors, or that they earn a higher wage rate than other rank-and-file employees, are non 2(11) "secondary" indicia, which standing alone, do not confer supervisory status. Adco, at 1120. Indeed, like other rank-and-file employees, and unlike admitted supervisors, control room operators are hourly paid and receive overtime. Control room operators also receive the same benefits as other employees.

Equally unpersuasive is the suggestion that if the control room operators are not supervisors, then employees working on the night shift are regularly working without supervision. As noted above, constant direct supervision is not required due to the repetitive nature of the work, and the senior level of the employees. The record further shows that because the employees are on rotating shifts, all of them have contact and are directly supervised by admitted operations supervisors whenever they work days. Moreover, supervisors Lewis and Parkins are on call and available at all times by cell phone and beeper for disciplinary or

operational problems, and the record shows that they are routinely contacted 4-5 times per week, and, if necessary, go into the plant at night. NLRB v. KDFW-TV, Inc., 790 F.2d 1273, 1279 (5<sup>th</sup> Cir. 1986) (employees were not supervisors despite employer's claim that employees were left unsupervised during nights and weekends, because admitted supervisors were "generally available for consultation" at all times), enforcing, 274 NLRB 1014 (1985). Accord Washington Nursing Home, 321 NLRB at 381.

The evidence as a whole shows that the control room operators are akin to "leadmen" and act as a liason between employees and admitted supervisors, but do not themselves exercise supervisory authority. To the extent that control room operators have any role in tasks which might be deemed supervisory in nature, their role is limited to either a reporting or ministerial capacity, or they are required to operate within prescribed parameters. Thus, for example, a control room operator will report any disciplinary problems or operational problems to admitted supervisors, make notations on a record of contact if a person calls in sick, initial time cards, and use the Employer's established procedure to call persons in to work overtime. None of those functions require the use of independent judgment. Boston Medical Center Corp., 330 NLRB No. 30, slip op. RD at 51-53 (1999) ("obligation to report problems to management, without the accompanying authority to effectively recommend any responsive action," or follow a "predetermined protocol" in handling tasks, are not indicative of supervisory authority).

Accordingly, based on the foregoing, I find that the control room operators do not possess the supervisory indicia as enumerated in Section 2(11) of the Act, and they shall, therefore, be included in the unit found appropriate herein.

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